

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR**

**FRIDAY, THE 24TH AUGUST 2007 / 2ND BHADRA 1929**

**WP(C).No. 36443 of 2005(L)**  
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**PETITIONER:**  
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**T.K. RAGHAVAN,  
FREEDOM FIGHTER, S/O. KRISHNA KARANAVAR, "SORAJ",  
MANIKYAKAVU ROAD, THANA, KANNUR-670 012.**

**BY ADV. SRI.T.K.VIPINDAS,  
SMT.P.K.PRIYA,  
SMT.PREM BINDU T.K.**

**RESPONDENTS:**  
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- 1. THE STATE OF KERALA,  
REPRESENTED BY THE PRINCIPAL SECRETARY,  
GENERAL ADMINISTRATION (FFE-B) DEPARTMENT,  
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.**
- 2. THE DISTRICT COLLECTOR,  
KASARAGOD, VIDYANAGAR P.O., KASARAGOD DISTRICT.**
- 3. THE ACCOUNTANT GENERAL (A & E), KERALA,  
INDIAN AUDIT AND ACCOUNTS DEPARTMENT, M.G. ROAD,  
THIRUVANANTHAPURAM.**

**BY GOVERNMENT PLEADER SRI. V.T.K. MOHANAN,  
SRI.P.PARAMESWARAN NAIR,ASST SG.**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD  
ON 24/08/2007,THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:**

**prv.**

W.P.(C). NO.36443/2005:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE COMMUNICATION ISSUED BY THE DISTRICT COLLECTOR, KANNUR IN MAY 1972 AS REF. F8/301/72. DT. 14/05/72.

EXT.P.2: COPY OF THE JUDGMENT OF THIS HONOURABLE COURT IN O.P. NO. 3695/1995 DTD. 17/09/1996.

EXT.P.3.: COPY OF THE PROCEEDINGS OF THE R.2. DTD. 25/02/1997.

EXT.P.4: COPY OF THE REPRESENTATION DTD. 31/05/1997 BEFORE THE R.1. DTD. 31/05/1997 BEFORE THE R.1.

EXT.P.5: COPY OF THE LETTER OF THE RESPONDENT DTD. 01/10/1997.

EXT.P.6: COPY OF THE ORDER ISSUED BY THE R.1. TO THE R.2. DT. 11/11/1997.

EXT.P.7: COPY OF THE G.O. (P). NO. 143/71/PD DTD. 22/05/1971.

EXT.P.8: COPY OF THE G.O. (P). NO. 307/72/PD DTD. 09/08/1972.

EXT.P.9: COPY OF THE PROCEEDINGS OF THE R.2. DTD. 15/12/1997.

EXT.P.10: COPY OF THE ORDER ISSUED BY THE R.1. DTD. 18/01/1998.

EXT.P.11: COPY OF THE PROCEEDINGS NO. G2/21409/97 DTD. 09/12/1998 ISSUED BY THE R.2.

EXT.P.12: COPY OF THE REPRESENTATIONS DTD. 12/03/1999 SUBMITTED BY THE PETITIONER TO THE R.1.

EXT.P.13: COPY OF THE REPRESENTATIONS DTD. 12/03/1999 SUBMITTED BY THE PETITIONER TO THE HONOURABLE CHIEF MINISTER OF KERALA.

EXT.P.14: COPY OF THE COMMUNICATION RECEIVED FROM THE R.1. DTD. 26/05/1999.

EXT.P.15: COPY OF THE JUDGMENT IN O.P. 19750/1999 DTD. 04/11/2004.

EXT.P.16: COPY OF THE G.O. (P). NO. 226/2005/GAD DTD. 08/07/2005 ISSUED BY THE R.1.

RESPONDENT'S EXHIBITS: NIL.

//TRUE COPY//

prv.

**T.R. Ramachandran Nair, J.**

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**W.P.(C).NO.36443 of 2005-L**  
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**Dated this the 24th day of August, 2007**

**JUDGMENT**

The petitioner is challenging Ext.P16 order whereby the Government held that he is not entitled for payment of arrears of pension with effect from 1.4.1971 to 24.2.1997. Short facts are the following:

2. The petitioner submitted an application for grant of pension under the Kerala Freedom Fighters' Pension Rules, on 27.7.1971. The claim was effective from 1.4.1971. Ext.P1 is the letter issued by the District Collector, Kannur seeking various clarifications from the petitioner relating to his application. It is clearly mentioned therein that his application is dated 27.7.1971. When this application was pending, it was being processed by the Kannur Collectorate and later on, when Kasaragod District was formed, his native place was included in the Kasaragod District and as directed by the second respondent, he submitted a copy of the application before the District Collector, Kasaragod. Since the matter was not being processed, he filed O.P.No. 3695/1995 which was disposed of by Ext.P2 judgment. This court directed the respondents to consider the application dated 31.12.1993. Thereafter, the District Collector passed Ext.P3 proceedings according

sanction for the grant of pension under the Rules, to the petitioner. Thereafter, he filed Ext.P4 representation pointing out that he is entitled for the arrears as the original scheme allowed grant of pension with effect from the date of receipt of the application. This was granted by the Government as per Exts.P5 and P6 and Ext.P9 is the consequential proceedings of the District Collector sanctioning an amount of Rs.80,717.50 as arrears.

3. By Ext.P10, without notice to the petitioner, the Government cancelled the earlier communication Ext.P6 and consequently the District Collector also withdrew Ext.P9 by Ext.P11. He approached this court earlier, as again the Government as per Ext.P14, refused his request to reconsider the same. The matter was elaborately considered in Ext.P15 judgment. This court found that there is some force in the contention of the petitioner that the petitioner's application dated 31.12.1993 was in continuation of his original application dated 27.7.1971. The matter was directed to be re-examined. Clause 18 of the Scheme providing for payment of pension sanctioned in the case of applications received upto 15.8.1972 was also considered in the judgment.

4. The main ground stated in Ext.P16 to reject the claim is that in the application dated 31.12.1993, the petitioner had not stated that he had applied on 27.7.1971. The other one is that he was granted Freedom

Fighters' Pension as a special case pursuant to the judgment in O.P.No.3695/1995.

5. Ext.P1 will show that the date of application is 27.7.1971. Therefore, he has filed the application in the year 1971 itself. May be that, the applicant did not succeed initially which prompted him to file subsequent representations for re-examination of the issue. The stand taken that the pension was sanctioned as a special case does not appear to be correct. In Ext.P2, this court never directed that pension shall be sanctioned as a special case. The direction was to consider the application dated 31.12.1993 in the light of the recommendation of the District Collector. Therefore, the said reason stated in Ext.P16 cannot stand scrutiny.

6. Then the further question is whether merely because he has failed to mention in the subsequent application that he had applied on 27.7.1971, he cannot be granted pension from that date. This is a case where the petitioner at the first point of time, could not produce the eligibility details for claiming pension. But that cannot be taken against him to contend that the date of the application subsequently filed alone will govern the grant of pension. In fact, a similar issue was considered in the decision of the Supreme Court in **Mukund Lal Bhandari v. Union of India** (AIR 1993 SC 2127). It was held that for the consideration of the point with reference to

the date of application, the earliest application has to be accepted irrespective of the fact whether the same is accompanied by requisite eligibility criteria. Their Lordships held in paragraph 4 of the judgment in the following terms:

“Refusal on the part of Government to grant pension to freedom fighters on the ground that the applications were filed after expiry of prescribed date is not justified. Neither the date of the application nor the date on which the required proof is furnished should make any difference to the entitlement of the benefit under the Scheme. Hence, once the application is made, even if it is unaccompanied by the requisite eligibility data, the date on which it is made should be accepted as the date of the preferment of the claim whatever the date on which the proof of eligibility is furnished.”

Therefore, even though the first application submitted in the year 1971 was defective, the very basis of the claim was from that date and even though he had to move the authority on successive periods, it cannot be termed that sanction should confine itself to the last application that was filed in the year 1993. The scheme is the one that was originally brought into force with effect from 1.4.1971. May be that he had claimed pension on different grounds in the applications but that cannot be taken as a ground against him to find that the subsequent claim was an after thought.

7. In the counter affidavit, the stand taken is that the sanction of the pension ordered by the Government was as a special case and taking into account the direction of the High Court in Ext.P2 judgment. In fact, this

court had directed to consider the grant of pension in the light of the recommendation of the District Collector. Therefore, it cannot be said that it is granted as a special case by the Government independent of all other considerations or irrespective of the entitlement under the scheme. If it is to be done as a special case, then normally that would be in a case where the applicant does not fulfill the eligibility criteria, but the Government has sanctioned it on the basis of the fact that he is a genuine freedom fighter and was convinced about the sufferings of the applicant. Here, that contingency does not arise because he has been granted pension based on the eligibility found out from the records produced by him. Ext.P3 does not say that it was granted as a special case. Hence, the said averments contained in the counter affidavit cannot be accepted. Therefore, the finding in Ext.P16 that since it is sanctioned as a special case, the application dated 31.12.1993 is not in continuation of his application prior to 15.8.1972, is not correct.

8. For all the above reasons, Ext.P16 is quashed. The respondents are directed to restore the benefits granted to the petitioner as per Exts.P5, P6 and P9. Payments ordered as per Ext.P9 shall be effected within two

months from the date of receipt of a copy of this judgment.

The writ petition is disposed of in the above terms. No costs.

**(T.R. Ramachandran Nair, Judge.)**

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